

**REMARKS**

Claims 1-9, 11-15, 17-19, 21, 23-32, 35-39, 41-43, 46 and 48 are pending, of which Claims 1, 11, 21, 24, 35 and 46 are independent. Reconsideration and further examination are respectfully requested.

Claims 1-3, 5-8, 11-15, 17, 18, 21, 24-26, 28-31, 35-39, 41, 42 and 46 are rejected under 35 U.S.C. § 102(b) over U.S. Patent No. 5,758,257 (Herz), and Claims 4, 9, 19, 23, 27, 32, 43 and 48 are rejected under 35 U.S.C. § 103(a) over Herz. Reconsideration and withdrawal of the rejections are respectfully requested.

By way of a non-limiting example and in accordance with one or more embodiments, data streams are broadcast over the network in the form of a personalized Internet radio station, the data streams that are broadcast are selected by a selection process, which is influenced by input received from the user, but limits the user's control over the selection in order to prevent on-demand broadcast of data streams to the user.

Turning to the specific language of the claims, Claim 1 recites a method which accesses a database of data streams by at least one server; selects at least one data stream for broadcast over a computer network to an individual user computer as a personalized internet radio station, the at least one data stream being selected from the database according to a selection method performed by the at least one server to create a playlist of data streams, the selection method performed by the at least one server being influenced by input received from the individual user that comprises individual user preferences for data streams to be broadcast but not controlled by the individual user's input so as to prevent on-demand broadcast of data streams to the individual user; transmits the at least one selected data stream to the individual user computer from the at least one server via the network; receives feedback via the network at the at least one server, the feedback expressing an individual user preference of the individual user regarding the transmitted at least one data stream; and updates the selection method using the individual user preference. The updated selection method performed by the at least one server biases selection of data streams to be experienced at the individual user computer in accordance with the individual user preferences and limits the individual user's control over selection of particular data streams from the database to prevent on-demand broadcast of data streams.

In accordance with the method of Claim 1, at least one data stream is selected for broadcast over a computer network to an individual user computer as a personalized internet radio station. According to Claim 1, the data stream selection is performed in accordance with a selection method which is influenced by individual user preferences of the individual user but which is not controlled by the individual user's input to prevent on-demand broadcast of data streams to the individual user.

Herz cannot form the basis of a proper § 102 rejection, and cannot form the basis of a proper § 103 rejection, since Herz fails to teach, suggest or disclose multiple claim elements.

In contrast to Claim 1, which controls selection of data streams based on individual user preferences to prevent on-demand broadcast of data streams to the individual user, Herz provides the user with complete on-demand control over selection of the multimedia content that the user wishes to experience. Herz uses user preferences to select channel options to be presented to the user for choice by the user, and allows the user to select other programs as well.

The Applicant respectfully refers the Examiner to Herz' Abstract, which describes that Herz develops customer profiles for a recipient/customer to determine the *attractiveness of each video program* to the recipient/customer, and *virtual channels* are generated to *produce a series of video or data programming which will provide the greatest satisfaction to each customer*. Herz uses a selection algorithm to select a *subset of available programs* based on the preferences of the user, i.e., the programs that are *most desirable for viewing by the customer* (Herz, col. 5, lines 4-22). According to Herz, the user may *select the desired video programming, which may or may not include the programming offered on the 'virtual channels'* (Herz, col. 5, lines 16-18). In other words, the customer has total control over the video programming in Herz. If the customer selects an offered channel, the customer can choose to view the video programming that is presented to the customer or the customer can choose to select other programming. Herz gives the customer complete on-demand control over the video programming broadcast to the customer, as opposed to the claimed selection method performed by said at least one server being influenced by input received from said individual user that comprises individual user preferences for data streams to be broadcast but not controlled by said individual user's input so as to prevent on-demand broadcast of data streams to said individual user.

Herz thus fails to teach or suggest multiple elements of Claim 1, in which individual user input influences but does not control selection of data streams, in which a selection method limits the user's control over selection of data streams to prevent on-demand broadcast of data streams, and in which the selection method uses individual user preferences for data streams to select data streams for broadcast to the individual user but prevents on-demand broadcast of data streams to the individual user.

In view of the foregoing, since Herz is missing multiples elements recited in Claim 1, Herz cannot provide the basis of a proper § 102(b) or a §103(a) rejection. Claim 1 and the claims that depend from Claim 1 are therefore believed to be in condition for allowance. Claims 11, 21, 24, 35 and 46 and the claims that depend from Claims 11, 21, 24, 35 and 46 are also believed to be in condition for allowance for at least the same reasons.

Should matters remain which the Examiner believes could be resolved in a telephone interview, the Examiner is requested to telephone the Applicant's undersigned attorney. Alternatively, since it is believed that the claims of the present application are in condition for allowance, the Examiner is respectfully requested to issue a Notice of Allowance at the Examiner's earliest convenience.

The applicant's attorney may be reached by telephone at 212-801-6729. All correspondence should continue to be directed to the address given below, which is the address associated with Customer Number 76058.

The Commissioner is hereby authorized to charge any required fee in connection with the submission of this paper, any additional fees which may be required, now or in the future, or credit any overpayment to Account No. 50-1561. Please ensure that the Attorney Docket Number is referenced when charging any payments or credits for this case.

Respectfully submitted,

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